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No. 04-1348

Supreme Court, U.S.
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In The
Supreme Court of the United States

JEFFREY R. ROYAL,

Petitioner,

vs.

TOM REID, Head of Security,
Iowa Medical and Classification Center,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. DOES THE PLAIN LANGUAGE OF THE PRISON LITIGATION REFORM ACT, 42 U.S.C. § 1997e(e), CONTAIN AN EXCEPTION FOR CLAIMS UNDER THE FIRST AMENDMENT, WHEN NO PHYSICAL INJURY OCCURS?

2. IS IT CONSTITUTIONAL TO LIMIT ATTORNEYS' FEES BY STATUTE (THE PRISON LITIGATION REFORM ACT), WHEN THE PLAINTIFF RECEIVED ONLY NOMINAL DAMAGES?

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BRIEF IN OPPOSITION

The Respondent, Tom Reid, respectfully opposes the Petition for Writ of Certiorari to review the opinion and judgment of the United States Court of Appeals for the Eighth Circuit entered in this case on July 15, 2004. Petition for rehearing, and for rehearing en banc, was denied on October 15, 2004.

OPINIONS BELOW

The opinion of the Eighth Circuit Court of Appeals is included as an appendix to the Petition and has been reported as *Royal v. Kautzky, et al.*, 375 F.3d 720 (8th Cir. 2004).

In addition, the opinion of the trial court, filed August 22, 2002, is also included in the appendix to the petition, and is unreported.

STATEMENT OF THE CASE

This is an appeal from a civil rights complaint brought by Jeff Royal, an inmate in the Iowa Department of Corrections system. Royal came into the prison system with medical needs arising from a pre-existing spinal cord injury. He had been using a wheelchair when he entered the system, but three months after his admission, was using crutches. Disputes arose among Royal, the corrections' administration, and the medical professionals over his need for a wheelchair, the use of crutches, and his refusal to exercise.

Royal continued to make numerous complaints and grievances following his unsuccessful attempts to modify his medical treatment, consistent with his personal preferences. (App. 33a.) Royal received a disciplinary report for being disruptive and abusive with medical staff which report was eventually dismissed. Royal was placed in administrative segregation by the security director, Tom Reid, and a transfer request was initiated. He was maintained in administrative segregation until his transfer was completed. Following an evidentiary hearing, the district court concluded that Reid had unconstitutionally retaliated against Royal by placing him in segregation because of his numerous grievances. (App. 33a.) That fact finding was not appealed. It is undisputed that Royal suffered no physical injury during his segregation. (App. 34a.)

Since Royal did not suffer physical injury, the district court applied the Prison Litigation Reform Act, 42 U.S.C. § 1997e(e) (PLRA), in a decision upheld by the Eighth Circuit Court of Appeals, and awarded nominal damages of $1.00. Punitive damages were considered but not awarded after finding Reid did not act with evil motive or reckless indifference, and because he had since retired, eliminating the need for deterrence. (App. 33a.) Applying the PLRA's limitation on attorneys' fees, the district court, again upheld by the Eighth Circuit, awarded $1.50 in fees (150 percent of the monetary judgment).

REASONS FOR DENYING THE WRIT

I. None of The "Compelling Reasons" Guiding this Court's Exercise of Discretion are Present.

In an omission fatal to his Petition, Royal neither cites to Rule 10, nor argues its elements. (Rule 10, Rules of the United States Supreme Court.) Instead, Royal concludes his plea for discretionary review by suggesting merely: "There is something wrong with [this] outcome." (Pet. 25.) Petitioner beseeches this Court to grant the Petition and "reach a different result." (Pet. 7.) Petitioner can only hint at an argument which would lead to a conclusion that the Circuit Courts are in conflict, or that this case is a vast departure from the usual course of judicial proceedings.

Review by certiorari is not a matter of right, but of discretion, granted only for "compelling reasons." Petitioner's asserted error consists of only of "the misapplication of a properly stated rule of law." (Sup. Ct. R. 10.)

II. The Court of Appeals Properly Stated, and Applied, the Plain Language of the Prison Litigation Reform Act.

A. Absent physical injury, compensatory damages for mental distress are barred. The PLRA states that "[n]o Federal action may be brought by a prisoner . . . for mental or emotional injury . . . without a showing of physical injury." 42 U.S.C. § 1997e(e). Petitioner seeks compensatory damages "for the time spent in lockup" (Pet. 7), all the while conceding that he suffered no physical injury. (App. 34a.) His claim, for time in lockup, is for mental or emotional distress, as he conceded in his pretrial deposition when asked to list his damages: "[B]asically you know, a lot of mental stress, a lot of

mental fatigue, a lot of mental harassment. The hole is a very hard place to be in." (App. 5a-6a.) Petitioner now asks whether the statute means what it says.

The Eighth Circuit joined the majority of Courts of Appeals in concluding that Congress in its specific, exclusive and "unmistakably clear" language "did not intend [the section] to limit recovery only to a select group of federal actions" and applied the limitation to all actions brought by prisoners for mental and emotional injury. (App. 35a.) *See, e.g., Thompson v. Carter*, 284 F.3d 411 (2d Cir. 2002); *Allah v. Al-Hafeez*, 226 F.3d 247 (3rd Cir. 2000); *Davis v. District of Columbia*, 158 F.3d 1342 (D.C. Cir. 1998); *Herman v. Holiday*, 238 F.3d 660 (5th Cir. 2001).

In contrast to the Petitioner's strained parsing of the language (Pet. 8), the phrase "no federal action" in the PLRA includes the descriptor "for mental or emotional injury" in its proscription. Petitioner wrongly bisects the phrase and ignores the descriptor when he suggests that the language is ambiguous, because the Circuits agree that actions for nominal damages, punitive damages and injunctive relief may be brought. (Pet. 7-8.) Petitioner here seeks reversal of those Circuit decisions arguing that his compensatory damages are somehow different than damages for "mental or emotional injury", despite his testimony to the contrary, and without defining what those non-emotional injuries might be.

If his claim is for "false imprisonment", he is not without a remedy in state court. He chose the federal forum and alleged a Section 1983 cause of action for violation of his First Amendment rights. Congress created the federal cause of action and Congress can impose conditions and limitations on its exercise, and has done so.

See, e.g., Porter v. Nussle, 534 U.S. 516 (2002) (imposing an administrative exhaustion requirement on inmate suits involving conditions). Absent physical injury, his cause of action for mental distress, in the federal forum which he chose, is barred.

Damages were awarded by the district court, consistent with the PLRA. The Eighth Circuit upheld the award of nominal damages to Royal because he may not

> recover some indescribable and indefinite damage allegedly arising . . . *See, e.g., Memphis Cmty. Sch. Dist. v. Stachura,* 477 U.S. 299, 308 n.11 (stating "nominal damages and not damages based on some undefinable 'value' of infringed rights, are the appropriate means of vindicating rights whose deprivation has not caused actual, provable injury")

(App. 37a.) *See also, Carey v. Piphus,* 435 U.S. 247, 267 (1978).

Much is made by Petitioner, and by the dissent (Heaney, App. 42a, et seq.), that courts in several jurisdictions have either "affirmatively held that [the PLRA] does not apply to First Amendment claims or have declined to apply the physical injury requirement to such claims." (App. 45a.) *See Canell v. Lightner,* 143 F.3d 1210, 1213 (9th Cir. 1998) ("deprivation of First Amendment entitles a plaintiff to judicial relief wholly aside from any physical injury he can show."); *Rowe v. Shake,* 196 F.3d 778, 781-782 (7th Cir. 1999) (a prisoner is entitled to judicial relief for a violation of his First Amendment rights). (App. 45a-46a.)

The distinction is without a difference. There is no quarrel with the asserted rights of the Petitioner to

"judicial relief". He may seek, and did, nominal damages, punitive damages and injunctive relief. The PLRA only prohibits his cause of action for mental and emotional injuries.

As the dissent concedes, First Amendment claims "are not claims *for* mental or emotional injury but are *for* violations of intangible rights whose deprivation is an injury in and of itself." (App. 48a.) "Whether his claim is valid is not linked to the existence or severity of his mental or emotional anguish." (App. 51a.) " . . . First Amendment rights 'are abridged the moment a state silences free speech . . . '" (App. 51a, citing *Shaheed-Muhammad v. Dipaolo,* 138 F. Supp. 2d 99, 108 (D. Mass. 2001)(quoting *West Virginia State Bd. Of Educ. v. Barnette,* 319 U.S. 624, 642 (1943). It is that instant violation, intangible and undefinable as it is, which merits an award of nominal damages if proven. *Stachura,* 477 U.S. at 308. The PLRA only bars a cause of action for mental injury subsequent to, and flowing from, that First Amendment violation, absent physical injury.

Petitioner's argument both proves too much (in arguing that the statute wrongly excludes First Amendment claims) and too little (in arguing that some undefined damage flows from that claim, which is different than mental or emotional injury). There is no conflict in the Circuits; there is no decision on an important federal question that mandates supervision. In sum, there is no compelling reason to grant the Petition.

B. The PLRA limits an Attorneys' Fee award when Petitioner receives only nominal damages. The statute limits fees (in language all seem to agree is not

artful) to 150 percent of the monetary judgment. In this case where nominal damages of $1.00 were awarded, fees of $1.50 were assessed. The Eighth Circuit, in upholding the district court decision, applied a prior panel review of that PLRA prohibition. (App. 17.) *See Foulk v. Cherrier,* 262 F.3d 687 (8th Cir. 2001).

Petitioner concedes, in apparent but silent deference to the requirements of Sup. Ct. R. 10, that the Courts of Appeals are unanimous in upholding the constitutionality of this provision. (Pet. 19.) *See Boivin v. Black*, 225 F.3d 36 (1st Cir. 2000); *Walker v. Bain*, 257 F.3d 660 (6th Cir. 2001), *cert. denied,* 535 U.S. 1095 (2002); *Johnson v. Daley*, 339 F.3d 582 (7th Cir. 2003), *cert. denied*, ___U.S. ___, 124 S. Ct. 1654 (2004); *Madrid v. Gomez*, 191 F.3d 990 (9th Cir. 1999); *Jackson v. Board of Paroles*, 331 F.3d 790 (11th Cir. 2003), *cert. denied*, 54 U.S. 880 (2003); *Collins v. Montgomery County*, 176 F.3d 679 (3rd Cir. 1999), *cert. denied,* 528 U.S. 1115 (2000). Citation to the votes of dissenting Circuit Court judges does not a conflict in the Circuits make. (Pet. 19.) There simply is no conflict, much less a reason, and much less than that, a compelling reason, to exercise this Court's discretion.

The PLRA does nothing more than place in statute the limitation on attorneys' fees already contained in *Farrar v. Hobby,* 506 U.S. 103 (1992). The award of nominal damages makes Petitioner the prevailing party and eligible for fees. *Texas State Teachers v. Garland Independent School District,* 489 U.S. 782 (1989). But the propriety of fees, and eligibility for fees, are separate issues. The award of nominal damages goes to the reasonableness of the fee. *Hensley v. Eckerhart,* 461 U.S. 424, 436 (1983)("the degree of success obtained is the most critical factor.") In the case

of nominal damages, "the only reasonable fee may be no fee at all." *Farrar,* 506 U.S. at 115.

Petitioner argues that since the Defendant may utilize *Farrar* as a limitation on the fee request, the PLRA is unnecessary and for that reason is irrational and unconstitutional. (Pet. 23-24.) Petitioner's argument again seeks too much. Instead, the *Farrar* limitation on the fee request proves the constitutionality of the statutory limitation to the same effect.

CONCLUSION

For the above reasons, the Petition should be denied.

Respectfully submitted,

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